United Nations A/INF/64/7

General Assembly

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Sixty-fourth session

United Nations Administrative Tribunal

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, for their information, the annual note by the United Nations Administrative Tribunal to the President of the General Assembly.

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Annex

Annual note by the United Nations Administrative Tribunal to the President of the General Assembly

1. At its third plenary session, held in Paris on 20 December 1951, the Administrative Tribunal decided to submit a note each year to the President of the General Assembly. In accordance with this decision, the present note is submitted in respect of the year 2009.

A. Appointment of members of the Tribunal by the General Assembly

2. In view of the provisions of General Assembly resolution 62/228, no new members were appointed.

B. Composition of the Tribunal during 2009

3. In 2009, the Tribunal was composed of the following members:

Geneva, 29 June to 31 July:

Spyridon Flogaitis, *President*
Jacqueline R. Scott, *First Vice-President*
Dayendra Sena Wijewardane, *Second Vice-President*
Brigitte Stern
Goh Joon Seng
Bob Hepple
Agustín Gordillo

New York, 26 October to 25 November:

Dayendra Sena Wijewardane, *President*
Bob Hepple, First *Vice-President*
Goh Joon Seng, *Second Vice-President*
Spyridon Flogaitis
Jacqueline R. Scott
Brigitte Stern
Agustín Gordillo

C. Sixtieth plenary session

4. The Tribunal met in annual plenary session in New York on 23 November 2009, pursuant to article 5, paragraph 1, of its rules. All members were present except Mr. Spyridon Flogaitis and Mr. Agustín Gordillo.

D. Judgements delivered during 2009

5. In 2009, the Tribunal held two sessions, one in Geneva from 29 June to 31 July and one in New York from 26 October to 25 November. The composition of the panels and the corresponding judgements rendered are set out below.

Case No. 1313
Balogun
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Ms. Stern
Sir Bob Hepple

(Balogun against the Secretary-General of the United Nations)
(Request by former United Nations staff member for revision of Judgements Nos. 1232 and 1350)
Judgement No. 1434

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Case No. 1501
Acevedo et al.
Geneva, 29 June to 31 July
New York, 26 October to 25 November

Geneva
Ms. Scott, presiding
Mr. Wijewardane
Mr. Goh

New York
Mr. Goh, presiding
Ms. Scott
Ms. Stern

(Acevedo et al. against the Secretary-General of the United Nations)
(Request by current and former United Nations staff members for conversion to permanent appointment)
Judgement No. 1476

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Case No. 1502
Montag
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Sir Bob Hepple
Mr. Gordillo

(Montag against the Secretary-General of the United Nations)
(Request by former International Criminal Tribunal for Rwanda (ICTR) staff member for rescission of the decision not to renew his fixed-term appointment and request to remove performance appraisal from official status file)
Judgement No. 1435

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Case No. 1505
Cone et al.
Geneva, 29 June to 31 July
Ms. Scott, presiding
Mr. Wijewardane
Mr. Goh

(Cone et al. against the Secretary-General of the United Nations)
(Request by current United Nations staff members for rescission of the decision not to formally advertise upgraded and reclassified posts)
Judgement No. 1441

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Case No. 1507
Tebeyene
Geneva, 29 June to 31 July
New York, 26 October to 25 November

Geneva
Ms. Scott, presiding
Mr. Wijewardane
Mr. Goh

New York
Sir Bob Hepple, presiding
Ms. Scott
Ms. Stern

(Tebeyene against the United Nations Joint Staff Pension Board (UNJSPB))
(Request by wife of a deceased staff member for widow's benefits under article 34 of the United Nations Joint Staff Pension Fund (UNJSPF) Regulations)
Postponed and transferred to the United Nations Appeals Tribunal.

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Case No. 1508
Agagishiev
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Sir Bob Hepple
Mr. Gordillo

(Agagishiev against the Secretary-General of the United Nations)
(Request by former United Nations High Commissioner for Refugees (UNHCR) staff member for rescission of the decision not to renew his fixed-term appointment)
Judgement No. 1436

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Case No. 1509
Simmons (1)
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Sir Bob Hepple
Mr. Gordillo

(Simmons against the Secretary-General of the United Nations)
(Request by current United Nations staff member for rescission of a promotion decision and allegations of intimidation and harassment)
Judgement No. 1437

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Case No. 1510
(El-Eman) Bloomberg
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Sir Bob Hepple
Mr. Gordillo

(Bloomberg against the Secretary-General of the United Nations)
(Request by former staff member of the United Nations Office of the Humanitarian Coordinator for Iraq for rescission of the decision not to renew his fixed-term appointment)
Judgement No. 1438

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Case No. 1511
Kannan
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Ms. Stern
Sir Bob Hepple

(Kannan against the Secretary-General of the United Nations)
(Request by former staff member of the United Nations Peacekeeping Force in Cyprus (UNFICYP) for rescission of the decision to demote him one level for five years without possibility of promotion for sexual harassment of female supervisee and another staff member, and for interfering with the official investigation into the allegations made against him; transfer from UNFICYP and mandatory gender sensitivity/management training)
Judgement No. 1439

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Case No. 1512
Martin
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Ms. Stern
Mr. Gordillo

(Martin against the Secretary-General of the United Nations)
(Request by current United Nations staff member for rescission of decision not to recognize his personal status as a married staff member for purposes of obtaining entitlements and benefits)
Judgement No. 1440

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Case No. 1513
Lesar
Geneva, 29 June to 31 July
Ms. Scott, presiding
Mr. Wijewardane
Mr. Goh

(Lesar against the Secretary-General of the United Nations)
(Request by former staff member of the United Nations Interim Administration Mission in Kosovo (UNMIK) for rescission of decision to open a criminal investigation against him, in violation of his due process rights)
Judgement No. 1465

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Case No. 1514
Gakehmi
Geneva, 29 June to 31 July
New York, 26 October to 25 November

Geneva
Mr. Flogaitis, President
Ms. Stern
Mr. Gordillo

(Gakehmi against the Secretary-General of the United Nations)
(Request by former staff member of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) for rescission of decision to summarily dismiss him from service for sexual exploitation and abuse)
Judgement No. 1477

New York
Mr. Wijewardane, President
Mr. Goh
Ms. Scott

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Case No. 1515
Arda
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Sir Bob Hepple
Mr. Gordillo

(Arda against the Secretary-General of the United Nations)
(Request by staff member of the United Nations Conference on Trade and Development (UNCTAD) for retroactive promotion)
Judgement No. 1442

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Case No. 1516
Pascal
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Ms. Stern
Mr. Gordillo

(Pascal against the Secretary-General of the United Nations)
(Request by former United Nations staff member for rescission of the decision not to renew his fixed-term appointment)
Judgement No. 1443

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Case No. 1517
Guignot
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Sir Bob Hepple
Mr. Gordillo

(Guignot against the Secretary-General of the United Nations)
(Request by former staff member of the United Nations Office at Geneva (UNOG) for rescission of the decision to summarily dismiss him for serious misconduct)
Judgement No. 1444

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Case No. 1518
Kazandjian
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Sir Bob Hepple
Mr. Gordillo

(Kazandjian against the Secretary-General of the United Nations)
(Request by United Nations University (UNU) staff member for rescission of the decision not to promote him)
Judgement No. 1445

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Case No. 1519
Clarke (1)
Geneva, 29 June to 31 July
New York, 26 October to 25 November

Geneva
Ms. Scott, presiding
Mr. Wijewardane
Mr. Goh

New York
Mr. Wijewardane, President
Mr. Goh
Ms. Scott

(Clarke against the Secretary-General of the United Nations)
(Request by former United Nations staff member for rescission of the decision not to recognize his son as his dependant for pension and After-Service Health Insurance purposes; time-bar)
Judgement No. 1478

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Case No. 1520
Clarke (2)
Geneva, 29 June to 31 July
New York, 26 October to 25 November

Geneva
Ms. Scott, presiding
Mr. Wijewardane
Mr. Goh

New York
Mr. Wijewardane, President
Mr. Goh
Ms. Scott

(Clarke against the UNJSPB)
(Request by former United Nations staff member for rescission of the decision not to add dependant child after parent's separation from service (rectification of personal data in pension record); and to approve payment of UNJSPF child's benefit)
Judgement No. 1479

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Case No. 1521
Huseynov
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Sir Bob Hepple
Mr. Gordillo

(Huseynov against the Secretary-General of the United Nations)
(Request by former staff member of the World Food Programme/United Nations Development Programme (UNDP) for rescission of the decision to separate him from service for misconduct with compensation in lieu of notice)
Judgement No. 1446

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Case No. 1522
Tissot
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Sir Bob Hepple
Mr. Gordillo

(Tissot against the Secretary-General of the United Nations)
(Request by former MONUC staff member for removal of letter of reprimand for "inappropriate behaviour" from his official status file; and request for compensation for "punitive actions", namely, transfer from MONUC and loss of special post allowance to D-1)
Judgement No. 1447

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Case No. 1523
Said
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Sir Bob Hepple
Mr. Gordillo

(Said against the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA))
(Request by former UNRWA staff member for payment of salary for the period from 27 November 1956 (date of termination of original contract) to 8 June 1957 (date of re-employment)
Judgement No. 1448

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Case No. 1524
Sims
Geneva, 29 June to 31 July
Mr. Wijewardane, presiding
Ms. Stern
Mr. Goh

(Sims against the Secretary-General of the United Nations)
(Request by former United Nations staff member for rescission of the decision holding that he had no standing to file an appeal with the Vienna Joint Appeals Board (JAB) because (a) he was not a staff member at the time the decision he contests — denying him access to the Vienna International Centre — was taken; and (b) the appeal did not relate to the non-observance of his terms of appointment. The Applicant claims that this decision contradicts and rejects the conclusion of the Vienna JAB that it lacked jurisdiction, *ratione loci*)
Postponed and transferred to the United Nations Dispute Tribunal, Geneva.

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Case No. 1525
Fagundes
Geneva, 29 June to 31 July
Ms. Scott, presiding
Mr. Wijewardane
Mr. Goh

(Fagundes against the Secretary-General of the United Nations)
(Request by former United Nations Environment Programme (UNEP) staff member seeking a finding that a Medical Board was convened in violation of her due process rights; refusal to provide the Applicant with a copy of the Medial Board's report)
Judgement No. 1466

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Case No. 1526
Boo de Lopez
Geneva, 29 June to 31 July
Ms. Scott, presiding
Mr. Wijewardane
Mr. Goh

(Boo de Lopez against the UNJSPB)
(Request by wife of deceased UNJSPF participant for widow's benefit under article 34 of the UNJSPF Regulations)
Judgement No. 1467

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Case No. 1527
Kelemen
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Sir Bob Hepple
Mr. Gordillo

(Kelemen against the Secretary-General of the United Nations)
(Request by former United Nations Children's Fund (UNICEF) staff member for rescission of the decision to summarily dismiss her for serious misconduct)
Judgement No. 1449

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Case No. 1528
Valdes
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Sir Bob Hepple
Mr. Gordillo

(Valdes against the Secretary-General of the United Nations)
(Request by United Nations staff member for rescission of the decision not to promote him)
Judgement No. 1450

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Case No. 1529
Lacoste
Geneva, 29 June to 31 July
Ms. Scott, presiding
Mr. Wijewardane
Mr. Goh

(Lacoste against the UNJSPB)
(Request by former ICTR staff member for restoration of the prior contributory service with UNEP and ICTR)
Judgement No. 1468

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Case No. 1530
Ferrena
Geneva, 29 June to 31 July

Geneva
Ms Scott, presiding
Mr. Wijewardane
Mr. Goh

New York
Mr. Wijewardane, presiding
Mr. Goh
Ms. Scott

(Ferrena against the Secretary-General of the United Nations)
(Request by former United Nations staff member for compensation of accrued annual leave and unused home leave; to release final payments; and to pay termination indemnity in full. Appeal not receivable by JAB as there was no request for administrative review)
Judgement No. 1469 and Judgement No. 1480

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Case No. 1531
Aling'o
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Sir Bob Hepple
Mr. Gordillo

(Aling'o against the Secretary-General of the United Nations)
(Request by former UNHCR staff member for rescission of the decision to summarily dismiss him for serious misconduct)
Judgement No. 1451

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Case No. 1532
Wilson
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Sir Bob Hepple
Mr. Gordillo

(Wilson against the Secretary-General of the United Nations)
(Request by former ICTR staff member for rescission of the decision to separate him from service with compensation in lieu of notice for (a) not exercising proper control and oversight over United Nations assets, equipment and resources; (b) unnecessary inflation of estimates, procurement and bids; and (c) receiving a bribe)
Judgement No. 1452

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Case No. 1533
Bali
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Sir Bob Hepple
Mr. Gordillo

(Bali against the Secretary-General of the United Nations)
(Request by former staff member of the United Nations Office on Drugs and Crime (UNODC) for rescission of the decision not to renew his fixed-term appointment)
Judgement No. 1453

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Case No. 1535
Blankson
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Sir Bob Hepple
Mr. Gordillo

(Blankson against the Secretary-General of the United Nations)
(Request by former United Nations staff member for rescission of the decision separating him from service with compensation in lieu of notice for misuse of rental subsidy and for knowingly providing false information regarding his degrees and attesting to its truth)
Judgement No. 1454

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Case No. 1536
Oge
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Ms. Stern
Mr. Gordillo

(Oge against the Secretary-General of the United Nations)
(Request by former MONUC staff member for rescission of the decision to summarily dismiss him from service for being improperly engaged in outside activities; for improper use of United Nations property; condoning acts of sexual exploitation and abuse; discrediting the United Nations; and refusal to cooperate with the investigation)
Judgement No. 1455

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Case No. 1537
Wachiuri-Nguru
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Sir Bob Hepple
Mr. Gordillo

(Wachiuri-Nguru against the Secretary-General of the United Nations)
(Request by former UNEP staff member for rescission of the decision separating her from service without notice for removing the name of an eligible candidate from a list of applicants for a G-4 post and substituting the name of another candidate whose application had not been submitted in time)
Judgement No. 1456

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Case No. 1538
Paul
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Ms. Stern
Sir Bob Hepple

(Paul against the Secretary-General of the United Nations)
(Request by United Nations staff member for rescission of the decision not to promote him)
Judgement No. 1457

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Case No. 1539
Hunt-Matthes
Geneva, 29 June to 31 July
New York, 26 October to 25 November

Geneva
Mr. Flogaitis, President
Sir Bob Hepple
Mr. Gordillo

New York
Mr. Wijewardane, President
Sir Bob Hepple
Mr. Goh

(Hunt-Matthes against the Secretary-General of the United Nations)
(Request by former UNHCR staff member for rescission of the decision not to renew her fixed-term appointment)
Judgement No. 1499
Case referred to the United Nations Dispute Tribunal, Geneva for consideration on the merits, jointly with Case No. 1680.

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Case No. 1540
Hain
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Sir Bob Hepple
Mr. Gordillo

(Hain against the Secretary-General of the United Nations)
(Request by former United Nations staff member for rescission of the decision not to promote him)
Judgement No. 1458

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Case No. 1541
Piskolti
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Sir Bob Hepple
Mr. Gordillo

(Piskolti against the Secretary-General of the United Nations)
(Request by former International Trade Centre staff member for rescission of the decision not to promote him)
Judgement No. 1459

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Case No. 1542
Asariotis
Geneva, 29 June to 31 July
New York, 26 October to 25 November

Geneva
Ms. Scott, presiding
Mr. Wijewardane
Mr. Goh

New York
Mr. Wijewardane, President
Ms. Scott
Mr. Goh

(Asariotis against the Secretary-General of the United Nations)
(Request by UNCTAD staff member for correction of entry level)
Judgement No. 1470 and Judgement No. 1482

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Case No. 1543
Gray
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Sir Bob Hepple
Mr. Gordillo

(Gray against the Secretary-General of the United Nations)
(Request by MONUC staff member for rescission of the decision not to promote him)
Judgement No. 1460

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Case No. 1544
Mbarushimana
Geneva, 29 June to 31 July
Ms. Scott, presiding
Mr. Wijewardane
Mr. Goh

(Mbarushimana against the Secretary-General of the United Nations)
(Request by United Nations staff member for interest and compensation for delayed execution of judgement)
Judgement No. 1471

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Case No. 1545
Diong
Geneva, 29 June to 31 July
Ms. Scott, presiding
Ms. Stern
Mr. Goh

(Diong against the Secretary-General of the United Nations)
(Claim by former UNDP staff member for loss of personal effects held in storage)
Judgement No. 1472

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Case No. 1546
Elasoud
Geneva, 29 June to 31 July
Ms. Scott, presiding
Mr. Wijewardane
Mr. Goh

(Elasoud against the Secretary-General of the United Nations)
(Claim by former staff member of the United Nations Office at Vienna (UNOV) for unfair selection process for three vacancies; not receivable by JAB as there was no request for administrative review)
Postponed and transferred to the United Nations Dispute Tribunal.

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Case No. 1547
Kassa
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Ms. Stern
Mr. Goh

(Kassa against the Secretary-General of the United Nations)
(Request by former Economic Commission for Africa (ECA) staff member for rescission of the decision not to reclassify his post to the G-6 level in June 1989; receivability/time-bar JAB)
Judgement No. 1461

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Case No. 1548
Simmons (2)
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Sir Bob Hepple
Mr. Gordillo

(Simmons against the Secretary-General of the United Nations)
(Request by United Nations staff member for rescission of the decision not to promote her; failure on the part of JAB to proceed with her appeal in a timely manner; appeal against the decision of the Administration not to initiate and complete her performance evaluation reports for an extended period, in particular for the period 2005-2006)
Judgement No. 1462

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Case No. 1549
Sirois
Geneva, 29 June to 31 July
New York, 26 October to 25 November
Geneva
Ms. Scott, presiding
Mr. Wijewardane
Mr. Goh
New York
Sir Bob Hepple, presiding
Mr. Goh
Ms. Stern

(Sirois against the Secretary-General of the United Nations)
(Claim by former United Nations staff member against the placement of adverse material in his official status file; request for compensation for delays in the handling of his case)
Judgement No. 1483

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Case No. 1550
Banerjee
Geneva, 29 June to 31 July
Ms. Scott, presiding
Mr. Wijewardane
Mr. Goh

(Banerjee against the Secretary-General of the United Nations)
(Claim by former UNDP staff member for implementation of Judgement No. 1128 (2003) in a timely manner; contesting the Administration's decision to pay, rather than reinstate, him)
Judgement No. 1473

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Case No. 1551
Damian
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Sir Bob Hepple
Mr. Gordillo

(Damian against the Secretary-General of the United Nations)
(Request by United Nations staff member for rescission of the decision not to promote her)
Judgement No. 1463

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Case No. 1552
Maniraho
Geneva, 29 June to 31 July
Mr. Flogaitis, President
Sir Bob Hepple
Mr. Gordillo

(Maniraho against the Secretary-General of the United Nations)
(Request by former UNDP staff member for rescission of the decision not to renew his fixed-term appointment: failure on the part of the Administration to deal with the Applicant in good faith)
Judgement No. 1464

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Case No. 1553
Yudin
Geneva, 29 June to 31 July
Ms. Scott, presiding
Mr. Wijewardane
Mr. Goh

(Yudin against the Secretary-General of the United Nations)
(Request by the United Nations Office at Geneva staff member for rescission of decision not to renew his fixed-term appointment (on secondment from the Russian Federation))
Judgement No. 1474

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Case No. 1193
West
New York, 26 October to 25 November
Mr. Wijewardane, President
Mr. Goh
Ms. Scott

(West against the Secretary-General of the United Nations)
(Request by former United Nations staff member for interpretation and execution of Judgement No. 1133; Advisory Board on Compensation Claims (ABCC))
Judgement No. 1475

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Case No. 1555
Buccianti
New York, 26 October to 25 November
Mr. Wijewardane, President
Sir Bob Hepple
Ms. Stern

(Buccianti against the Secretary-General of the United Nations)
(Request by former MONUC staff member for rescission of decision to issue a reprimand against him in connection with a finding that he was involved in a conflict of interest; challenges the conduct and outcome of investigations of the allegations against him as well as the findings by the Joint Disciplinary Committee (JDC) and the Secretary-General that he was guilty of verbal abuse; request for compensation)
Judgement No. 1484

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Case No. 1556
Wathigo
New York, 26 October to 25 November
Mr. Wijewardane, President
Ms. Scott
Ms. Stern

(Wathigo against the Secretary-General of the United Nations)
(Request by former UNDP staff member for rescission of the decision finding her claim irreceivable (time-bar); leave entitlements)
Judgement No. 1485

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Case No. 1557
Hamdi
New York, 26 October to 25 November
Mr. Wijewardane, President
Sir Bob Hepple
Ms. Stern

(Hamdi against the Secretary-General of the United Nations)
(Request by UNCTAD staff member for rescission of the decision not to select him for a post, challenges the decision to select an external candidate at the 60-day mark over an internal candidate at the 30-day mark)
Judgement No. 1486

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Case No. 1558
Gonzalez-Ruiz
New York, 26 October to 25 November
Mr. Wijewardane, President
Ms. Scott
Ms. Stern

(Gonzalez-Ruiz against the Secretary-General of the United Nations)
(Claim by former UNODC staff member for review of receivability *ratione materiae* (JAB level); alleged violation of due process rights during investigation by the Office of Internal Oversight Services (OIOS), proceedings before JAB, and actions by the Executive Director of UNODC; whistle-blower policies and protection; retaliation; access to documentation)
Judgement No. 1487

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Case No. 1559
Uneissi
New York, 26 October to 25 November
Sir Bob Hepple, presiding
Mr. Goh
Ms. Scott

(Uneissi against the Commissioner-General of UNRWA)
(Request by former UNRWA staff member for rescission of the decision to terminate his probationary appointment)
Judgement No. 1488

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Case No. 1560
Adong
New York, 26 October to 25 November
Mr. Wijewardane, President
Sir Bob Hepple
Mr. Goh

(Adong against the Secretary-General of the United Nations)
(Request by former ICTR staff member for rescission of the decision not to renew her fixed-term appointment; receivability (time-bar JAB); referral of case to JAB for consideration on the merits and/or consideration of the case on the merits by the United Nations Administrative Tribunal given the position of JAB; compensation)
Judgement No. 1489

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Case No. 1561
Toh (1)
New York, 26 October to 25 November
Mr. Wijewardane, President
Ms. Scott
Ms. Stern

(Toh against the Secretary-General of the United Nations)
(Request by former United Nations staff member for rescission of the decision (1) to demote him without opportunity to serve at a higher level; and (2) to fine him in the amount of two months' net base salary for refusal to comply with the Secretary-General's directive to fully disclose his financial information and for failing to cooperate with an ongoing OIOS investigation)
Judgement No. 1490

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Case No. 1562
Benaissa
New York, 26 October to 25 November
Sir Bob Hepple, presiding
Mr. Goh
Ms. Stern

(Benaissa against the Secretary-General of the United Nations)
(Request by former Department of Economic and Social Affairs staff member for rescission of the decision arising out of non-reimbursement of his claims)
Judgement No. 1491

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Case No. 1570
Toh (2)
New York, 26 October to 25 November
Mr. Wijewardane, President
Ms. Scott
Ms. Stern

(Toh against the Secretary-General of the United Nations)
(Request by former United Nations staff member for rescission of the decision to place him on special leave with full pay; receivability of the plea concerning the Applicant's accrued annual leave)
Judgement No. 1492

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Case No. 1573
Wilkie
New York, 26 October to 25 November
Mr. Wijewardane, President
Sir Bob Hepple
Ms. Stern

(Wilkie against the Secretary-General of the International Civil Aviation Organization (ICAO))
(Request by ICAO staff member for rescission of the decision not to promote her)
Judgement No. 1493

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Case No. 1577
Goodale
New York, 26 October to 25 November
Sir Bob Hepple, presiding
Mr. Goh
Ms. Stern

(Goodale against UNJSPB)
(Request by former World Intellectual Property Organization staff member for rescission of the decision refusing to grant her request for a disability benefit)
Judgement No. 1494

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Case No. 1592
Annan
New York, 26 October to 25 November
Sir Bob Hepple, presiding
Mr. Goh
Ms. Stern

(Annan against UNJSPB)
(Request by former United Nations staff member for rescission of the decision not to pay him UNJSPF periodic pension benefits that he had accrued through his preceding service with the Organization, with respect to the period he served as the Secretary-General of the United Nations; receivability (time-bar))
Judgement No. 1495

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Case No. 1598
Mitchell
New York, 26 October to 25 November
Mr. Wijewardane, President
Ms. Scott
Ms. Stern

(Mitchell against the Secretary-General of the International Maritime Organization (IMO))
(Request by former IMO staff member for rescission of the decision of the IMO JAB not to consider her appeal; no administrative decision to appeal)
Judgement No. 1496

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Case No. 1606
Abu Sirhan
New York, 26 October to 25 November
Sir Bob Hepple, presiding
Mr. Goh
Ms. Stern

(Abu Sirhan against the Commissioner-General of UNRWA)
(Request by former UNRWA staff member for rescission of the decision to terminate his probationary appointment)
Judgement No. 1497

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Case No. 1621
Abu El Fahem
New York, 26 October to 25 November
Sir Bob Hepple, presiding
Mr. Goh
Ms. Stern

(Abu El Fahem against the Commissioner-General of UNRWA)
(Request by former UNRWA staff member for rescission of the decision to summarily dismiss him from service for serious misconduct)
Judgement No. 1498

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Case No. 1649
Jayousi
New York, 26 October to 25 November
Sir Bob Hepple, presiding
Ms. Scott
Ms. Stern

(Jayousi against the Commissioner-General of UNRWA)
(Request by former UNRWA staff member for rescission of the decision to summarily dismiss him from service for serious misconduct)
Judgement No. 1481

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E. Summary of cases that merit special attention

6. The Tribunal would like to draw the attention of the General Assembly to a number of judgements distributed in 2009 that it considers to be landmark decisions, expanding its jurisprudence. A short summary of each of these judgements follows.

7. Judgement No. 1476, *Acevedo et al.*, was rendered on 25 November 2009 and distributed on 23 December. This case was comprised of 233 Applicants who were all serving on fixed-term appointments, with at least five years of continuous service at the time of the events which gave rise to their Application. The Applicants requested, inter alia: (1) full and fair consideration for permanent appointment, under the existing Staff Regulations and Rules; and (2) compensation for delays in the consideration for a career conversion. The Tribunal recognized the considerable latitude of discretion afforded to the Secretary-General in matters of appointments, promotions and conversions, as cited in Judgements No. 362, *Williamson* (1986); No. 958, *Draz* (2000); and No. 411, *Al-Ali* (1988). Additionally, the Tribunal examined Article 101, paragraph 1, of the Charter of the United Nations, which affords the Secretary-General staff appointment powers under Staff Regulations established by the General Assembly, such as staff regulations 4.2 and 4.5 (b), and also staff rule 104.12 (b) (iii). Additionally, the Tribunal reviewed General Assembly resolution 37/126, document A/C.5/47/43, Secretary-General's bulletin ST/SGB/278 and ST/SGB/280 and Amend.1, document A/C.5/51/34, General Assembly resolution 51/226 and Secretary-General's bulletin ST/SGB/2009/10 and found that "the Secretary-General was entitled to refuse consideration of the Applicants for conversion of their contractual status to permanent appointments ... in light of all the circumstances [including the financial crisis and the reorganization measures of the United Nations at the time at issue and] General Assembly resolutions on the matter" and dismissed the Application in its entirety.

8. Judgement No. 1490, *Toh*, was rendered on 25 November 2009 and distributed on 23 December. At the time of the events in question, the Applicant served as Assistant Secretary-General, Office of Central Support Services. In connection with

an ongoing audit and investigation of the procurement operations of the Organization, the Applicant was initially placed on special leave with full pay, which was later changed to suspension with full pay when he was charged with misconduct and his case referred to the Joint Disciplinary Committee. JDC found that the Applicant's failure to disclose certain assets in the 2004-2005 financial disclosure forms constituted negligence, which undermined the disclosure policy, and that, therefore, the Applicant should receive a supervisory reprimand. In relation to the allegations that the Applicant did not cooperate with an officially authorized investigation and failed to comply with the Secretary-General's directives to disclose his financial information, JDC found that the Applicant "openly disobey[ed] the direct and proper instructions of the Secretary-General" to disclose financial information, which constituted misconduct, and recommended a written censure.

9. The Secretary-General demoted the Applicant with no possibility of promotion and imposed a fine of two months' salary, for failure to disclose requested financial documents in relation to the investigation into alleged misuse of funds, waste and abuse in the procurement process. The Applicant requested that the Tribunal rescind the Secretary-General's decision and also requested, inter alia, the Tribunal to find that JDC erred when it concluded that he disobeyed the Secretary-General's instructions to disclose financial information. The Tribunal found that the Applicant's failure to comply with the requests for financial records constituted misconduct and that the Applicant violated staff regulations 1.2 (m), (n) and (r) and staff rule 104.4 (e). Accordingly, the Tribunal rejected the Application in its entirety.

10. Judgement No. 1495, *Annan*, was rendered on 25 November 2009 and distributed on 23 December. The Applicant served as a United Nations staff member for 30 years until he retired on 31 December 1996, and took office as Secretary-General on 1 January 1997, when he was elected by the General Assembly for a five-year term. He was subsequently re-elected for a second term, which expired on 31 December 2006. The Tribunal noted that the Applicant was "the first United Nations staff member in the history of the Organization to be elected to this high office, and this represented an unprecedented situation for the UNJSPF". The Applicant requested the Tribunal to rescind the decision of the Standing Committee of UNJSPB that rejected his claims for payment of accumulated benefits from 1 January 1997 to 31 December 2006. The Tribunal further noted that the General Assembly has not considered "the treatment to be accorded to a UNJSPF periodic benefit that a serving Secretary-General could receive while in office based on participation while a staff member".

11. It was not disputed that on the date the Applicant retired as a staff member from the Organization, he had not yet reached the normal retirement age and he became entitled to receive an early retirement benefit under article 29 of the UNJSPF Regulations. Additionally, the Applicant's Instructions for payment of benefits dated 28 January 1997 informed UNJSPF of his election for "one-third lump sum ... and the balance as early retirement benefit. The Payment Instructions attached to this form were for 'remittance to my account as follows: I REQUEST THAT PAYMENT OF MY PERIODIC BENEFIT BE SUSPENDED DURING THE PERIOD OF MY SERVICE AS UNITED NATIONS SECRETARY-GENERAL'" [sic]. The Tribunal considered that "the meaning and effect of these words", in particular the word "suspend", was the major point of contention between the parties. The Applicant contended that he agreed only to "suspend" payment, in the

sense of deferment of payment of accumulated benefits for the period he served as Secretary-General. The Respondent claimed that the Applicant agreed to "suspension" in the sense of a forfeiture or waiver of periodic benefits during the period he served as Secretary-General. The Tribunal considered that on its face, the words "that payment of my periodic benefit be suspended" were ambiguous and could be interpreted in either way.

12. Upon review of the sense and meaning of the Payment Instructions and relevant words, as utilized in relation to the evidence presented to the Tribunal and all relevant facts, the Tribunal concluded that "the UNJSPF failed to act carefully and transparently in order to ensure that the consequences of the wording used by the Applicant in his Payment Instruction were made clear to him. In view of the ambiguity, the Instruction must be construed as having a lesser rather than a greater adverse effect on the Applicant's vested pension entitlements. Not without hesitation, the Tribunal finds that the Respondent has failed to establish on the balance of probabilities, that the word 'suspend' was used in the sense of a forfeiture of periodic benefits".

13. Accordingly, the Tribunal ordered the rescission of the Standing Committee's decision to refuse the Applicant's claims for payment of accumulated benefits, to which he was entitled for the period 1 January 1997 to 31 December 2006, and ordered that the Applicant's accumulated benefits be paid with interest calculated at 8 per cent per annum from 1 January 2007.